IN THE HIGH COURT OF JUDICATURE AT BOMBAY

O. O. C. J.

APPEAL NO.111 OF 2007
IN
NOTICE OF MOTION NO.2128 OF 2003
IN
SUIT NO.2239 OF 2003
WITH
NOTICE OF MOTION NO.671 OF 2007

L. Liladhar & Co. & Anr. ..Appellants.
Vs.
Rathod & Co. & Anr. ..Respondents.

....

Shri Virendra Tulzapurkar, Snior Advocate i/b M/s. Bhagwati Trivedi & Co. for the Appellants.

Shri H.W. Kane for Respondent No.2.

....

CORAM: **R. M. S. KHANDEPARKAR, &**
DR. D.Y. CHANDRACHUD, JJ.

7th March, 2007.

P.C. :

1. Heard.

2. The learned advocate for the Appellant challenges the order dated 19th January, 2007 passed in Notice of Motion 2138 of 2003. By the impugned order the Notice of Motion taken out by the Appellant to restrain the Respondent from using the mark "NANDI" has been discharged and the application has been thereby

rejected. The Learned Single Judge in the impugned order has clearly observed that the Respondents are marketing the goods under the same mark since prior to 1985 and the said fact was clearly admitted pursuant to the notice issued on 25th February, 1985 by the Respondents. The Appellant had replied to the said notice on 13th April, 1985. However, the entire incident relating to that correspondence including the said reply dated 13th April, 1985 by the Appellant was suppressed in the plaint filed by the Appellant. It came to light only from the pleadings of the Respondents. It was only thereafter an explanation was sought to be tendered to the effect that the Appellant had forgotten about the said correspondence. The Learned Single Judge has disbelieved the said explanation for the reasons recorded in the impugned order. It has been clearly observed by the Learned Single Judge that when these facts were pointed out by the Defendants in their reply, the Appellants in paragraph 10 of their rejoinder claimed that "when the plaintiffs filed the plaint, they did not remember about the notice exchanged between the parties". It is claimed that after receiving the reply, enquiry was made with the senior partner and then only the plaintiffs came to know about the notice. What is pertinent to note is that the name of the senior partner is not

disclosed. It is not disclosed as to who on behalf of the defendant No.2, which is a Company, had entered into oral agreement with whom because plaintiff No.1 is a partnership firm. It is also not disclosed which individual on behalf of the defendant No.2 entered into that oral agreement. The senior partner who is supposed to have remembered about the agreement has not filed any affidavit. The Learned Single Judge has disbelieved the said explanation. We are entirely in agreement with the observations made by the Learned Single Judge and the findings arrived in that regard. Indeed there is absolutely no satisfactory explanation forthcoming from the Appellant for the suppression of the fact regarding the notice and reply in the year 1985. Be as it may, the fact remains that since prior to 1985, the Respondents had marketed the goods under the same mark and since 1985 the Appellant had not approached the Court. There is absolutely no explanation for the delay in approaching the Court. An equitable relief cannot be granted merely on asking and more particularly when there is an unexplained delay in approaching the Court. In such circumstances, it will be appropriate for the Court to decide the matter on merits after the parties are given opportunity to lead evidence in support of their rival contentions. Considering the

same no fault can be found with the impugned order. As no prima facie case was made out for the grant of any interim relief, in our considered opinion, the Learned Single Judge was justified in rejecting the interim relief and discharging the Notice of Motion.

3. Counsel appearing for the Appellant did try to argue that the fact that the mark is a registered trade mark of the Appellant is not in dispute and the only point which was sought to be canvassed is about delay on the part of the Appellant without laying necessary foundation for such contention in the pleadings. Since the matter is decided on account of unexplained laches on the part of the Appellant in approaching the Court for injunctive relief at the interim stage, it is not necessary to deal with the contentions sought to be raised on behalf of the Appellant at this stage. Suffice it to observe that in the facts and circumstances of the case and the ground on which the impugned order is passed, no case is made out for interference in the impugned order. The Appeal is dismissed. There shall be no order as to costs.

4. Needless to say that all the observations made herein as well as in the impugned order are for the purpose of deciding the

matter at the interim stage and shall not come in the way of the parties or the Learned Single Judge while deciding the suit on merits.

5. In view of the dismissal of the Appeal, Notice of Motion 671 of 2007 does not survive and stands disposed of.

(R. M. S. KHANDEPARKAR, J.)

(DR. D.Y. CHANDRACHUD, J.)